

SENATE BILL 2665

By Miller J

AN ACT to amend Tennessee Code Annotated, Title 35, relative to fiduciary and trust estates; and to adopt the Tennessee Uniform Prudent Investor Act of 2002.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

**SECTION 1.** Sections 1 through 14 of this act may be cited as the Tennessee Uniform Prudent Investor Act of 2002.

**SECTION 2. DEFINITIONS.**

As used in this act unless the context requires otherwise:

(1) "Governing instrument" means a will, deed, agency agreement, or trust instrument.

(2) "Trust" means any fiduciary relationship created by a governing instrument.

(3) "Trustee" includes all trustees, guardians, and other fiduciaries.

**SECTION 3. PRUDENT INVESTOR RULE.**

(a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this act.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reliance on the provisions of the trust.

#### **SECTION 4. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES.**

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee may consider in investing and managing trust assets of the following are relevant to the trust or its beneficiaries:

- (1) general economic conditions;
- (2) the possible effect of inflation or deflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
- (5) the expected total return from income and the appreciation of capital;
- (6) other resources of the beneficiaries;

(7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one (1) or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) In addition to the permissible investments listed in Tennessee Code Annotated, Sections 35-3-102 through 35-3-111, a trustee may invest in any kind of property or type of investment consistent with the standards of this act.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

(g) The powers granted by this section to trustees, guardians and other fiduciaries shall be in addition to the powers existing under other provisions of this code authorizing investments by fiduciaries.

## **SECTION 5. DIVERSIFICATION.**

(a) A trustee shall diversify the investments of the trust

(1) unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying, or

(2) except as otherwise provided in subsection (b).

(b)

(1) In the absence of express provisions to the contrary in the governing instrument, a fiduciary may without liability continue to hold property received into a trust at its inception or subsequently added to it or acquired pursuant to proper authority if and as long as the fiduciary, in the exercise of good faith and reasonable prudence, discretion and intelligence, may consider that retention is

in the best interest of the trust and its beneficiaries or in furtherance of the goals of the trustor as determined from that instrument. Such property may include capital stock in the corporate fiduciary and stock in any corporation controlling, controlled by or under common control with such fiduciary; and the fiduciary may acquire additional shares of such stock by stock dividends, stock splits, exchanges and conversions for other stock or debentures and exercise of rights to acquire stock of the corporation or another corporation acquiring the stock of the corporation by merger, consolidation or reorganization.

(2) In the absence of express provisions to the contrary in the governing instrument, a deposit of trust funds at interest in any bank, savings and loan association or other financial institution (including the fiduciary and an affiliated depository institution) shall be a qualified investment to the extent that such deposit is insured under any present or future law of the United States. The fiduciary may also hold deposits in such institutions without interest in reasonable amounts and for reasonable times for operating expenses, anticipated distributions and pending investments.

**SECTION 6. DUTIES AT INCEPTION OF TRUSTEESHIP.** Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this act.

**SECTION 7. LOYALTY.** A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

**SECTION 8. IMPARTIALITY.** If a trust has two (2) or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

**SECTION 9. INVESTMENT COSTS.** In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

**SECTION 10. REVIEWING COMPLIANCE.** Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

**SECTION 11. DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS.**

(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

**SECTION 12. LANGUAGE INVOKING STANDARD OF ACT.** The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this act: "investments permissible by law

for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

**SECTION 13. APPLICATION TO EXISTING TRUSTS.**

(a) This act applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this act governs only decisions or actions occurring after that date.

(b) This section shall not apply in any situation governed by the Uniform Veterans Guardianship Act, compiled in Title 34, Chapter 5.

**SECTION 14. COURT AUTHORITY.** Nothing in this act abrogates or restricts the power of an appropriate court in proper cases to direct or permit the fiduciary to deviate from the terms of the governing instrument or restrains a fiduciary from taking any action regarding the making or retention of investments.

**SECTION 15.** Tennessee Code Annotated, Section 35-3-117 is amended by deleting subsections (a) through (g) in their entirety and by redesignating subsections (h) through (k) accordingly.

**SECTION 16.** Tennessee Code Annotated, Title 35, Chapter 1, is amended by adding as a new appropriately numbered section the following:

Section 35-1-\_\_\_\_. Virtual Representation.

(a) If all primary beneficiaries of a trust are adults and not incapacitated, except as provided in subsection (c), any written agreement including, without limitation, an agreement construing any provision of the trust or an agreement regarding any duty, power, responsibility, or action of the trustee, between a

trustee and all of the primary beneficiaries of a trust shall be final and binding on the trustee and all beneficiaries of the trust, both current and future, as if ordered by a court with competent jurisdiction over all parties in interest, if all other persons who have a contingent, future or other interest in the trust would become primary beneficiaries only by reason of surviving a primary beneficiary.

(b) For purposes of this Section, "primary beneficiary" means a beneficiary who is either: (1) currently entitled or eligible to receive any portion of the trust income or principal, or (2) assuming nonexercise of all powers of appointment, will receive, or be entitled to withdraw, all or a portion of the principal of the trust, if the beneficiary survives to the final date of distribution with respect to the beneficiary's share.

(c) This Section shall not apply to an agreement that accelerates the termination of a trust, in whole or in part.

(d) In the trustee's sole discretion, the trustee may obtain opinion of counsel that any agreement proposed to be made under this section is not clearly contrary to the express terms of the trust instrument. The trustee may, but is not required to, enter into an agreement under this section. On and after its effective date, this Section applies to all existing and future trusts, but only as to agreements entered into on or after the effective date of this act.

**SECTION 17. SEVERABILITY.** If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**SECTION 18.** The Tennessee Code Commission is requested to include the official comments of the National Commissioners on Uniform State Laws in any publication containing the Tennessee Uniform Prudent Investor Act.

**SECTION 19.** This act shall take effect on July 1, 2002, the public welfare requiring it.